2015 IL App (2d) 131037-U
No. 2-13-1037
Order filed January 12, 2015



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| L.F., | ) | Appeal from the Circuit Court |
| | ) | of Lake County. |
| Plaintiff-Appellant, | ) | |
| | ) | |
| v. | ) | No. 12-MR-1538 |
| | ) | |
| THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES and Richard H. Calica, as Director of the Department of Children and Family Services, | ) | Honorable |
| | ) | Christopher C. Starck, |
| Defendants-Appellants. | ) | Judge, Presiding. |

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* The ALJ's indicated finding of child neglect for inadequate supervision was clearly erroneous and, accordingly, we ordered the Director to expunge the indicated finding from the State central register.

¶ 2 After the Department of Children and Family Services (DCFS) entered an indicated finding of child neglect for inadequate supervision (Allegation 74) against plaintiff, L.F., she administratively appealed the finding and requested that it be expunged from the State central register. Following an evidentiary hearing, the administrative law judge (ALJ) recommended to

deny the expungement request. Defendant, director of DCFS, Richard H. Calica (Director), agreed and denied plaintiff's request for expungement. The circuit court of Lake County affirmed the Director's decision. Plaintiff timely appeals from that order. For the following reasons, we reverse the trial court's decision and order the Director to expunge the indicated finding from the State central register.

¶ 3 I. FACTS

¶ 4 A. Background

¶ 5 The record reveals the following undisputed facts and procedural history. Plaintiff is the single parent of S.H., who was born July 27, 2006. Plaintiff and S.H. lived in a two-bedroom apartment in Round Lake Beach, Illinois.

¶ 6 In 2009, plaintiff was diagnosed with a dependency to drugs and alcohol. She received inpatient and outpatient treatment for her dependency to marijuana and alcohol. Plaintiff attended Alcoholics Anonymous (AA) meetings and met with a sponsor. Plaintiff also received psychiatric treatment from Dr. Katherine Singer for depression, anxiety, obsessive-compulsive disorder, and dermatillomania—a condition that caused her to obsessively pick at her skin.

¶ 7 Plaintiff also began therapy with Nancy Friedman, a licensed professional counselor, for anxiety and other psychological conditions. Friedman diagnosed her with an anxiety disorder and treated plaintiff for her substance abuse. Plaintiff met with Friedman weekly in 2011.

¶ 8 On July 3, 2011, while camping with friends, plaintiff was injured in a fall, suffering a hematoma to her tail bone. A doctor at the hospital prescribed Tylenol with codeine. Plaintiff only took the medicine briefly because it made her sleepy. While she was taking the Tylenol with codeine, she asked her mother, Carol M., to care for S.H., but her mother refused.

¶ 9 After her mother refused, plaintiff stopped taking the medicine and switched to smoking K3, which was considered to be legal synthetic marijuana at the time. She later testified at the administrative hearing that the drug gave her a feeling similar to a marijuana "high," making her feel relaxed and "happy." The first time she smoked K3, her son was with a friend of plaintiff. A few days later, plaintiff smoked K3 again but could not recall whether S.H. was at a friend's house or asleep in plaintiff's apartment. She began smoking K3 on a nightly basis, and during those times, S.H. was either asleep at home or with a friend. In total, she smoked K3 between 10 and 20 times. She could not remember which of those times she smoked K3 when S.H. was with her or when S.H. was with one of her friends.

¶ 10 Plaintiff became concerned that she was addicted and could not stop smoking K3. She admitted during an alcohol and substance abuse assessment that she told the evaluator that she was smoking two grams of K3 daily up to five days before the evaluation.

¶ 11 On August 5, 2011, plaintiff sought help from her friends, George Kinser and Natalie Brooks. Brooks had been plaintiff's AA sponsor. Brooks had not seen plaintiff for at least two months because plaintiff had no longer desired to work on her 12-step program. Brooks had detached from plaintiff when plaintiff decided to "go back out." She knew plaintiff was seeking help for a substance abuse problem because, after Brooks broke things off, Brooks was not allowed to talk to her unless she wanted help.

¶ 12 Plaintiff told Kinser and Brooks that she was smoking K3 and wanted help to stop because she was experiencing withdrawal symptoms. Kinser and Brooks agreed to help plaintiff. Kinser agreed to keep S.H. while Brooks took plaintiff to the Highland Park Hospital Emergency Room. Plaintiff admitted to smoking K3 on the way to the hospital.

¶ 13 The hospital records indicate that plaintiff told hospital staff that she wished to "detox" from alcohol and K3. Plaintiff told staff that she was drinking in excess of 10 shots per day, and that she was shaking and had diarrhea from attempting to withdraw from K3. The hospital screen of plaintiff came back negative.

¶ 14 The next morning, while waiting to transfer to a treatment center, plaintiff had an anxiety attack. She left the hospital despite advice to stay. Plaintiff called Friedman and told her of the panic attack. Friedman advised her to return to the hospital.

¶ 15 Plaintiff also called Kinser, who was concerned that she would continue to use K3. He refused to pick her up from the hospital. He thought it would be in plaintiff's best interest if she stayed at the hospital. Plaintiff left the hospital and began walking to Kinser's home, which was about 15 miles away.

¶ 16 Kinser called Carol M. after he spoke with plaintiff and told her that plaintiff was on the way to his house because she had left treatment prematurely. He told Carol M. that he did not want S.H. to be at his house when plaintiff arrived. Kinser is a school teacher and a mandated reporter and he was afraid that he would have to call DCFS if plaintiff showed up under the influence while S.H. was still there. Carol M. agreed to have S.H. stay with her and Brooks drove him to Carol M.'s house.

¶ 17 The police saw plaintiff as she walked away from the hospital and they took her to Kinser's home. When plaintiff discovered that S.H. was not there, she drove to Carol M.'s house. Carol M. offered to care for S. H. while plaintiff received assistance for her substance abuse problems and plaintiff became angry and refused.

¶ 18 Carol M. called the police while she was waiting for plaintiff to arrive because she thought it was not safe for S.H. to be with plaintiff when she was so agitated. Carol M. also

called Sandra Blank, a DCFS supervisor, for advice on what to do. Carol M. had previously worked for DCFS in the same office as Blank, which also was the office that conducted the investigation of plaintiff.

¶ 19 When plaintiff arrived at Carol M.'s home, she saw the police. Plaintiff became very upset when Carol M. accused her of being drunk and refused to release S.H. to her. The police officers tested plaintiff for alcohol, and the test came back zero. Carol M. still refused to allow S.H. to leave with plaintiff. Plaintiff yelled, threw her cell phone, and then drove away. She experienced an anxiety attack but, after speaking with an officer and being checked by paramedics, she agreed to leave S.H. with her mother for the night.

¶ 20 On August 6, 2011, the DCFS hotline received a call from Carol M. regarding suspected abuse of neglect on August 6, 2011. Marianne Zimmer took the call and Jane Postlewait, a child protection investigator, was assigned to investigate.

¶ 21 Postlewait interviewed S.H. at Carol M.'s home. He appeared healthy, clean, and well-dressed. He only complained that his mother kissed him too much and would not allow him to play outside by himself. Postlewait also observed plaintiff and S.H. together. She observed that plaintiff was very supportive and had positive interactions with S.H. She also went to plaintiff's apartment and reported it as clean, neat, and adequately furnished.

¶ 22 Postlewait interviewed plaintiff, who admitted to having a history of substance abuse, smoking K3, relapsing, and leaving the hospital prior to being discharged. Plaintiff told Postlewait that K3 had similar effects to marijuana.

¶ 23 Plaintiff signed the safety plan where plaintiff agreed to take part in a drug treatment program while S.H. remained at Carol M.'s house. A week later, plaintiff tested negative for drugs and the safety plan was dismissed.

¶ 24 Postlewait received a report from S.H.'s primary care physician that he was healthy, and his school reported that S.H. was doing well in school. Postlewait also learned during the investigation that plaintiff had been the victim of child abuse in 2004 and a victim of domestic violence. Postlewait also discovered that plaintiff's paramour had been indicated for child abuse in 2010 for hitting, kicking, and choking plaintiff when S.H. was present and for encouraging S.H. to participate in the domestic violence.

¶ 25 At the conclusion of her investigation, Postlewait recommended that plaintiff be indicated under Allegation 60, titled "Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare by Neglect." Postlewait did not recommend an indicated finding for Allegation 74.

¶ 26 DCFS notified plaintiff that it was indicating a report of child abuse/neglect under Allegation 60 against her and that the report was retained in the State central register. Plaintiff requested an appeal of the indicated finding on October 19, 2011, and requested a hearing within DCFS's administrative hearings unit. On January 23, 2012, DCFS notified plaintiff that it was amending its allegations against her to add an indicated report of inadequate supervision under Allegation 74.

¶ 27 B. July 9, 2012, Administrative Hearing

¶ 28 On July 9, 2012, the DCFS administrative hearings unit held a hearing on plaintiff's appeal, which encompassed a challenge to both indicated findings of neglect. A DCFS administrative law judge (ALJ) presided over the hearing.

¶ 29 Plaintiff testified that she successfully obtained sobriety on April 20, 2009, but acknowledged that she used K3 for a short period of time in July and August 2011, while S.H.

was asleep. When asked how smoking K3 affected her, plaintiff replied "[i]t's similar to a marijuana high so you get relaxed and like happy, but I'm still coherent and can function."

¶ 30 Plaintiff testified that she does everything for her son. She makes sure he is washed and has clean clothes, gets dressed and gets to school. She picks up S.H. from school in Libertyville. S.H. attended a Montessori School during the 2010-2011 school years, which cost plaintiff $11,000, even though her income was only $13,000. Plaintiff sent him to an expensive school because he was at an important stage of development, and she wanted him to have a good start.

¶ 31 Carol M. testified that, by July 2011, plaintiff was showing signs of a relapse. Carol M. reported that plaintiff had decreased her number of phone calls, had self-inflicted cuts and scratches, and had quit her job.

¶ 32 Carol M. and plaintiff signed a safety plan in which plaintiff agreed to undergo drug treatment while S.H. remained with Carol M. for one week. The plan was dismissed a week later when plaintiff tested negative for drugs and completed all the requirements.

¶ 33 Carol M. further admitted that, in July 2011, during the time she believed plaintiff was using drugs again, she allowed her 14-year-old son to stay at plaintiff's house for the night. She also acknowledged that she previously had worked at the same DCFS office that conducted the investigation. Carol M. had called Sandra Blank, her former DCFS supervisor, to discuss her legal rights in keeping S.H. because she was worried that plaintiff would take S.H. away from her and never let her see him again.

¶ 34 Carol M. testified that, in the months prior to August 2011, plaintiff was "doing a great job" at "being a single mother." In August 2011, Carol M. noticed that plaintiff had less contact with her family, her housekeeping dwindled, and S.H. seemed needier than usual.

Because of this, Carol M. stated that she believed that plaintiff was using drugs again. She admitted that she had her suspicions but could not prove it at that point.

¶ 35 Postlewait testified that she saw no signs of abuse or neglect with S.H. She stated that S.H. was "dressed appropriately, clean, [and had] no unusual marks or bruises." She further stated that "mom and S.H. *** have a positive relationship, positive interaction. He is not fearful of her. And [plaintiff] was concerned about her son's safety."

¶ 36 During cross-examination, Postlewait could not pinpoint a date on which plaintiff was under the influence of K3 while S.H. was in her custody. However, she stated that plaintiff admitted to using K3 in July and August 2011, and because plaintiff is the primary caretaker of S.H., Postlewait inferred that there must have been a time when plaintiff was under the influence of K3 while also supervising S.H.

¶ 37 Friedman testified that she saw plaintiff weekly, and S.H. attended the meetings about 30% of the time. Regarding the July and August 2011 sessions, Friedman testified that plaintiff was very engaged with S.H. Friedman noted that plaintiff was motivated to positive change, healthy parenting, and healthy behavior. Friedman further stated that plaintiff manifested some tremendously healthy parenting behaviors. When asked if she noticed a change in plaintiff's mood during this time period, Friedman responded that she remembered plaintiff feeling a little bit down. "But *** it wasn't a crisis." Friedman further stated that S.H. appeared happy, well adjusted, and cooperative, and that he was a very healthy kid. When asked if she considered calling DCFS during July or August 2011, Friedman, who is a mandated child abuse reporter, responded: "Absolutely not." Friedman stated that K3 is an "intoxicant," but she knew little else about it.

¶ 38 Sandra Blank, one of the supervisors at the DCFS field office, testified that she received a phone call from Carol M. on August 6, 2011, because Carol M. was concerned that plaintiff was using drugs. Blank was familiar with this issue since she had been Carol M.'s supervisor at DCFS, and she was aware of plaintiff's history of substance abuse. Blank had no other involvement with the investigation of the case.

¶ 39 Kinser and Brooks testified that they were plaintiff's sponsors. Brooks stated that she told plaintiff to exaggerate her drug and alcohol use in order to be permitted to detox at the hospital. She further testified that plaintiff was a really good mother and did anything and everything she could for S.H. and his well-being. Kinser testified that, when plaintiff arrived at the AA meeting, he did not remember her being under the influence. He further stated that he called Carol M. on August 6, 2011, after learning that plaintiff left the hospital, because he is a mandated reporter and was concerned that he might have to make a report. However, when plaintiff arrived at his house to pick up S.H. later that morning, Kinser did not feel the need to call DCFS.

¶ 40 On August 17, 2012, the ALJ issued her recommendation to deny expungement of the indicated findings of neglect due to an injurious environment (Allegation 60) and inadequate supervision (Allegation 74). As to Allegation 74, she concluded that DCFS carried its burden of proving by a preponderance of the evidence that plaintiff had "inadequately supervised her son when she was [his] primary caregiver, [because she] had a history of mood disorder and substance abuse, relapsed, and admitted smoking K3 on a daily basis, including occasions while her son slept in their apartment." The Director adopted the ALJ's recommendation as his final decision and denied plaintiff's request to expunge from the State central register the indicated findings of neglect against plaintiff.

¶ 41 On September 25, 2012, plaintiff filed a complaint in the circuit court for administrative review of the Director's decision denying her request to expunge the indicated findings of neglect. On January 22, 2013, the administrative review action was stayed pending resolution of *In re Julie Q. v. Department of Children & Family Services*, 2013 IL 113783. As a result of the supreme court's opinion, the indicated finding of neglect due to an injurious environment (Allegation 60) was expunged from the record. On September 10, 2013, the trial court affirmed the Director's decision to deny plaintiff's request to expunge the indicated finding of neglect due to inadequate supervision (Allegation 74). This timely appeal follows.

¶ 42 II. ANALYSIS

¶ 43 Plaintiff raises several arguments on appeal including whether (1) DCFS erred in denying plaintiff's request to expunge the indicated finding against her for inadequate supervision; and (2) the administrative decision is void because DCFS lacked the statutory authority to indicate plaintiff for inadequate supervision. Because we find that the ALJ's indicated finding of child neglect for inadequate supervision was clearly erroneous, we need not address any of the other issues raised by plaintiff, including the argument whether DCFS lacked the statutory authority to indicate plaintiff for inadequate supervision.

¶ 44 Under the Abused and Neglected Child Reporting Act (Reporting Act) (325 ILCS 5/1 *et seq*. (West 2010)), DCFS maintains a central register of all reported cases of suspected child abuse or neglect. 325 ILCS 5/7.7 (West 2010); *Shilvock-Cinefro v. Department of Children & Family Services*, 2014 IL App (2d) 130042, ¶ 20. DCFS operates a 24-hour telephone hotline for reports of suspected abuse or neglect. 89 Ill. Adm. Code 300.30(a) (2000). When DCFS investigates a report of neglect, it must determine whether the report is "indicated," unfounded," or "undetermined." 325 ILCS 5/7.12 (West 2010).

¶ 45 A report is indicated "if an investigation determines that credible evidence of the alleged abuse or neglect exists." 325 ILCS 5/3 (West 2012); *Shilvock-Cinefro*, 2014 IL App (2d) 130042, ¶ 20. Credible evidence of abuse or neglect is whenever "the available facts *** viewed in light of surrounding circumstances, would cause a reasonable person to believe that a child was abused or neglected." 89 Ill. Admin Code §336.20. An indicated report must be entered on the State central register, where it will remain for a minimum of five years. *Julie Q. v. Department of Children and Family Services*, 2011 IL App (2d) 100643, ¶ 29, *aff'd*, 2013 IL 113783.

¶ 46 The subject of an indicated report has the right to an administrative appeal and to request that the report be expunged. 325 ILCS 5/7.16 (West 2010); 89 Ill. Adm. Code 336.40, 336/50, 336.60 (2000); *Bolger v. Department of Children & Family Services*, 399 Ill. App. 3d 437, 447 (2010). DCFS bears the burden of proof in justifying its refusal to expunge the indicated report and must prove that a preponderance of the evidence supports the indicated finding. 89 Ill. Adm. Code 336.100(e) (2000); *Shilvock-Cinefro*, 2014 IL App (2d) 130042, ¶ 21. Following the hearing, the ALJ makes a recommendation to DCFS's Director, who may accept, reject, amend, or return the recommendation. 89 Ill. Adm. Code 336.220(a) (2000); *Slater v. Department of Children & Family Services*, 2011 IL App (1st) 102914, ¶ 24. The Director's decision is the final administrative decision. 89 Ill. Adm. Code 336.220(a) (2000); *Shilvock-Cinefro*, 2014 IL App (2d) 130042, ¶ 21.

¶ 47 Judicial review of the Director's decision is governed by the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2010)). Jurisdiction to review final administrative decisions is vested in the trial court, from which a party may appeal to this court. 734 ILCS 5/3-104, 3-112 (West 2010). As in all cases of administrative review, it is the decision of the agency not the

determination of the trial court that is the subject of our review. *Bolger v. Department of Children & Family Services*, 399 Ill. App. 3d 437, 448 (2010).

¶ 48 On administrative review, the applicable standard of review depends on whether the question presented is one of fact, one of law, or a mixed question of fact and law. *Id.* "An administrative agency's findings and conclusions on questions of fact are deemed *prima facie* true and correct." *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). A reviewing court is limited to determining whether the agency's findings of fact are against the manifest weight of the evidence. *Id.* at 210. An administrative agency's decision is against the manifest weight of the evidence "only if the opposite conclusion is clearly evident." *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). "If there is anything in the record which fairly supports the agency's decision, such decision is not against the manifest weight of the evidence and must be sustained upon review." *Grams v. Ryan*, 263 Ill. App. 3d 390, 396 (1994).

¶ 49 In contrast, an agency's decision on a question of law is not binding on a reviewing court and is reviewed *de novo*. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). When a case involves an examination of the legal effect of a given set of facts, it involves a mixed question of fact and law. *Id.* at 205. Mixed questions of fact and law are reviewed under a "clearly erroneous" standard. *Cinkus*, 228 Ill. 2d at 211; *Shilvock-Cinefro*, 2014 IL App (2d) 130042, ¶ 23. The agency's decision will be deemed clearly erroneous "only where the reviewing court, on the entire record, is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Shilvock-Cinefro*, 2014 IL App (2d) 130042, ¶ 23. "The clearly erroneous standard of review affords more deference to the agency than *de novo* review but less deference than manifest

weight review. Therefore, applying the clearly erroneous standard to mixed questions yields some deference to administrative expertise." *Du Page County Airport v. Department of Revenue*, 358 Ill. App. 3d 476, 482 (2005). In the present case, a determination of whether DCFS erred in denying plaintiff's request to expunge the indicated finding against her for inadequate supervision involves a determination of whether the facts satisfy the agency's legal standard for inadequate supervision. Accordingly, the DCFS determination is reviewed under the clearly-erroneous standard.

¶ 50 Of relevance to the first issue, the Reporting Act defines a neglected child as one who is not receiving the "care necessary for his or her well-being." 325 ILCS 5/3 (West 2012); *Slater*, 2011 IL App (1st) 102914, ¶ 39. "Appendix B" of DCFS's regulations delineates specific allegations of harm sufficient to trigger an investigation of reported child neglect. 89 Ill. Admin. Code §300, App. B (2011). "Inadequate Supervision" occurs when a "child has been placed in a situation or circumstances that are likely to require judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate." 89 Ill. Admin. Code §300, Appendix B (Allegation 74) (2011). Allegation 74 includes a nonexhaustive list of examples of inadequate supervision. Of consequence to the present case is the example of the caregiver being present but unable to supervise because of the caregiver's condition, which includes (a) where the parent or caregiver repeatedly uses drugs or alcohol to the extent that it has the effect of producing a substantial state of stupor, unconsciousness, intoxication, or irrationality, and (b) where the parent or caregiver cannot adequately supervise the child because of his or her medical condition, behavioral, mental, or emotional problems. 89 Ill. Admin. Code §300, App. B (Allegation 74) (2011).

¶ 51 Allegation 74 further provides factors to be considered, which are categorized into "child," "caregiver," and "incident" factors. Child factors include "[t]he child's age and developmental stage, particularly related to the ability to make sound judgments in the event of an emergency" and "[t]he child's physical condition, particularly related to the child's ability to care for or protect himself[.]" *Id.* Caregiver factors consist of the amount of time it takes the caregiver to reach the child, whether the caregiver can see or hear the child, and the caregiver's maturity, physical condition, emotional condition, and cognitive ability to make appropriate judgments on the child's behalf. Relevant factors about the incident include the frequency and duration of the occurrence, whether it occurred in the day or night, whether there were other people to oversee the child, and whether there are any "other factors that may endanger the health and safety of the child." *Id.*

¶ 52 The basis for DCFS's indicated finding against plaintiff was that she "inadequately supervised her son when she was the primary caregiver [and that she] relapsed, admitted smoking K3 on a daily basis, including occasions, while her son slept in their apartment." DCFS points to the following evidence in support of the ALJ's conclusion that plaintiff inadequately supervised her son: (1) plaintiff used K3 daily for approximately two weeks while the minor was either asleep at home or at someone else's home; (2) plaintiff admitted that her use of K3 made her high, similar to the effects of marijuana; (3) plaintiff's therapist, Friedman, testified that K3 is an "intoxicant" and that plaintiff was "sensitive" to such chemicals; (4) plaintiff sought help to detoxify and to stop using K3, yet checked out of the hospital against medical advice; and (5) despite testifying that the minor sometimes stayed with plaintiff's friends or with plaintiff's mother when plaintiff used K3, plaintiff did not deny that the minor was in her custody at least some of the times when she was high on K3. The ALJ essentially adopted

DCFS's findings in her determination that plaintiff inadequately supervised her son when she was the primary caregiver.

¶ 53 The question before us is whether the application of the law to these undisputed facts was clearly erroneous. Pursuant to Allegation 74, DCFS was tasked with presenting evidence to show that plaintiff had placed the minor "in a situation or circumstances that [we]re likely to require judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate," and that such circumstances existed because the parent or caregiver repeatedly used K3 to the extent that it had the effect of producing a substantial state of stupor, unconsciousness, intoxication, or irrationality. 89 Ill. Adm. Code 300, Appendix B (Allegation 74) (2011).

¶ 54 We find that DCFS did not meet its burden of proof. DCFS did not provide any evidentiary nexus between plaintiff's use of K3 and whether such use resulted in a substantial state of stupor, unconsciousness, or irrationality so that it placed S.H. in a situation which would likely require judgment or actions greater than his level of maturity. Plaintiff's testimony that her use of K3 made her "high" and that it was "similar to marijuana" does not establish a basis to conclude that this use resulted in such a substantial state that plaintiff could not adequately supervise her son. DCFS never introduced any evidence on the chemical effects of K3 and whether it leads an individual to becoming unconscious, irrational, or in such a state of stupor so that the individual is unable to care for a child adequately. Nor did DCFS provide evidence that plaintiff's use of K3 made her unconscious, irrational, or in a state of stupor. When asked about the effects of K3, plaintiff testified that she could still function after using it. While the ALJ was free to disbelieve plaintiff's testimony, DCFS did not present any evidence to refute this statement. In fact, quite the opposite was shown to be true. Plaintiff tested negative for drugs

and her safety plan was dismissed. Additionally, neither Friedman nor Kinser, who were mandated child abuse reporters, felt the need to report plaintiff to DCFS. Furthermore, Carol M. allowed her 14-year-old son to stay overnight at plaintiff's house during the relevant time period.

¶ 55 In sum, there was no evidence that plaintiff's use of K3 rendered her unable to adequately supervise S.H. while he slept. See *In re N.B.*, 191 Ill. 2d 338, 351 (2000) (in the context of a child protection proceeding, must show a nexus between respondent's conduct and the care of the children). Based on the record, we are left with the definite and firm impression that a mistake has been committed and therefore, we find that the ALJ's decision that DCFS had met its burden by a preponderance of the evidence was clearly erroneous.

¶ 56 III. CONCLUSION

¶ 57 The ALJ's determination that plaintiff inadequately supervised her son was clearly erroneous. Accordingly, the indicated finding against plaintiff should be expunged.

¶ 58 Reversed with directions.